

AMENDED IN ASSEMBLY JUNE 17, 2002

AMENDED IN SENATE MAY 15, 2002

AMENDED IN SENATE APRIL 29, 2002

SENATE BILL

No. 1878

Introduced by Senator Poochigian

February 22, 2002

An act to amend Sections 21300, 21305, and 21320 of the Probate Code, relating to wills.

LEGISLATIVE COUNSEL'S DIGEST

SB 1878, as amended, Poochigian. Will contests.

(1) Existing law provides that a no contest clause in an instrument is not enforceable against specified types of actions unless expressly identified in the no contest clause as a violation of the clause. Existing law includes a petition for settlement or for compromise affecting the terms of the instrument among those types of actions.

This bill would delete the above action from those provisions.

(2) Existing law also specifies the types of proceedings that do not, as a matter of public policy, violate a no contest clause.

This bill would revise and recast those provisions, and would also expand that list to include proceedings regarding the interpretation of an instrument containing a no contest clause, the approval of a settlement or compromise, the reformation of an instrument, and the accounting or report of a fiduciary, as specified. The bill would also define "direct contest" and "indirect contest" for purposes of those provisions, and would revise the definition of "contest," as specified. The bill would also make related, conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21300 of the Probate Code is amended
2 to read:
3 21300. As used in this part:
4 (a) “Contest” means any action identified in a “no contest
5 clause” as a violation of the clause. The term includes both direct
6 and indirect contests.
7 (b) “Direct contest” in an instrument or in this chapter means
8 a pleading in a proceeding in any court alleging the invalidity of
9 an instrument or one or more of its terms based on one or more of
10 the following grounds:
11 (1) Revocation.
12 (2) Lack of capacity.
13 (3) Fraud.
14 (4) Misrepresentation.
15 (5) Menace.
16 (6) Duress.
17 (7) Undue influence.
18 (8) Mistake.
19 (9) Lack of due execution.
20 (10) *Forgery*.
21 (c) “Indirect contest” means a pleading in a proceeding in any
22 court that indirectly challenges the validity of an instrument or one
23 or more of its terms based on any other ground not contained in
24 subdivision (b), and that does not contain any of those grounds.
25 (d) “No contest clause” means a provision in an otherwise
26 valid instrument that, if enforced, would penalize a beneficiary if
27 the beneficiary files a contest with the court.
28 SEC. 2. Section 21305 of the Probate Code is amended to
29 read:
30 21305. (a) For instruments executed on or after ~~the effective~~
31 ~~date of this section, the following actions may~~ *January 1, 2001, the*
32 *following actions* do not constitute a contest unless expressly
33 identified in the no contest clause as a violation of the clause:
34 (1) The filing of a creditor’s claim or prosecution of an action
35 based upon it.



1 (2) An action or proceeding to determine the character, title, or
2 ownership of property.

3 (3) A challenge to the validity of an instrument, contract,
4 agreement, beneficiary designation, or other document, other than
5 the instrument containing the no contest clause.

6 (b) ~~Notwithstanding~~ *Except as provided in subdivision (d),*
7 *notwithstanding* anything to the contrary in any instrument, the
8 following proceedings do not violate a no contest clause as a matter
9 of public policy:

10 (1) A pleading seeking relief under Chapter 3 (commencing
11 with Section 15400) of Part 2 of Division 9.

12 (2) A pleading under Part 3 (commencing with Section 1800)
13 of Division 4.

14 (3) A pleading under Part 2 (commencing with Section 4100)
15 of Division 4.5.

16 (4) A pleading regarding an order annulling a marriage of the
17 person who executed the instrument containing the no contest
18 clause.

19 (5) A pleading pursuant to Section 2403.

20 (6) A pleading challenging the exercise of a fiduciary power.

21 (7) A pleading regarding the appointment of a fiduciary or the
22 removal of a fiduciary.

23 (8) A pleading regarding an accounting or report of a fiduciary.

24 (9) A pleading regarding the interpretation of the instrument
25 containing the no contest clause or an instrument or other
26 document expressly identified in the no contest clause.

27 (10) A pleading regarding the approval of a settlement or
28 compromise whether or not it affects the terms of an instrument.

29 (11) A pleading regarding the reformation of an instrument to
30 carry out the intention of the person creating the instrument.

31 (12) A petition to compel an accounting or report of a fiduciary,
32 if that accounting or report is not waived by the instrument. If the
33 instrument waives an accounting or report of a fiduciary, a petition
34 to determine if subdivision (a) of Section 16064 applies does not
35 constitute a violation of a no contest clause.

36 (c) Subdivision (a) does not apply to a codicil or amendment to
37 an instrument that was executed on or after January 1, 2001, unless
38 the codicil or amendment adds a no contest clause or amends a no
39 contest clause contained in an instrument executed before January
40 1, 2001.

1 ~~Paragraphs~~ *Subdivision (b) shall apply only to instruments*
2 *of decedents dying on or after January 1, 2001, and to documents*
3 *that become irrevocable on or after January 1, 2001. However,*
4 *paragraphs (9), (11), and (12) of subdivision (b) shall only apply*
5 *to instruments of decedents dying on or after January 1, 2003, and*
6 *to documents that become irrevocable on or after January 1, 2003.*

7 (e) The provisions of paragraphs (6), (9), and (11) of
8 subdivision (b) do not apply if the court finds that the filing of the
9 pleading is a direct contest of an instrument or any of its terms, as
10 defined in Section 21300.

11 (f) The term “pleading” in subdivision (b) includes a petition,
12 complaint, response, objection, or other document filed with the
13 court that expresses the position of a party to the proceedings.

14 SEC. 3. Section 21320 of the Probate Code is amended to
15 read:

16 21320. (a) If an instrument containing a no contest clause is
17 or has become irrevocable, a beneficiary may apply to the court for
18 a determination of whether a particular motion, petition, or other
19 act by the beneficiary, including, but not limited to, creditor claims
20 under Part 4 (commencing with Section 9000) of Division 7, Part
21 8 (commencing with Section 19000) of Division 9, an action
22 pursuant to Section 21305, and an action under Part 7
23 (commencing with Section 21700) of Division 11, would be a
24 contest within the terms of the no contest clause.

25 (b) A no contest clause is not enforceable against a beneficiary
26 to the extent an application under subdivision (a) is limited to the
27 procedure and purpose described in subdivision (a).

28 (c) A determination under this section of whether a proposed
29 motion, petition, or other act by the beneficiary violates a no
30 contest clause may not be made if a determination of the merits of
31 the motion, petition, or other act by the beneficiary is required.

32 (d) A determination of whether Section 21306 or 21307 would
33 apply in a particular case may not be made under this section.